

Study L-4003

October 12, 1999

First Supplement to Memorandum 99-61**Family Consent in Health Care Decisionmaking: West Virginia Experience**

Dr. Robert Orr has forwarded a letter from Dr. Alvin H. Moss in Morgantown, WV, reporting favorably on the experience under that state's Health Care Surrogate Act of 1993. (See attached letter.) You will recall that the West Virginia statute is the primary source for the approach taken in the Commission's proposed family consent statute. Dr. Moss's letter illustrates the need for a statute of this type to overcome institutional reluctance to carry out the patient's known wishes and for selecting the most appropriate surrogate decisionmaker pursuant to statutory standards.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



ROBERT C. BYRD
HEALTH SCIENCES CENTER
OF WEST VIRGINIA UNIVERSITY

October 5, 1999

Robert Orr, MD
Loma Linda University
11175 Campus Street
11121 Coleman Pavilion
Loma Linda, CA 92354

Dear Bob:

I am writing to you with regard to our experience in West Virginia with the West Virginia Health Care Surrogate Act of 1993. This law has been very well received by patients, families, health care providers, and judges. For example, shortly after the bill was passed I was approached by an attorney for the wife of a patient who had been in a persisted vegetative state for four years. The patient had not completed an advance directive, but his wife was certain based on his expressed wishes that he would not want to be kept alive with tube feedings in his present state. The nursing home in which the patient was residing balked at removing the feeding tube and allowing the patient to die because of legality concerns. Prior to the Health Care Surrogate Act in West Virginia, there was no law that declared the withdrawal of life-sustaining treatment in an incapacitated patient who had not completed an advance directive to be legal. In this case, the judge declared from the bench that the health care surrogate law allowed the wife to be appointed the health care surrogate and to have the authority to request withdrawal of tube feedings. He felt the surrogate law gave clear direction to him in such cases. The wife was quite appreciative that finally her husband's wishes could be respected.

In many cases, the law has allowed for a person lower in the priority order to be selected as the health care surrogate because that person knows the patient's values and wishes better than anyone higher in the priority order. For example, a next-door neighbor who had been a close friend of a patient for years was selected as the surrogate over an adult child who had been estranged from his parent and was requesting heroic measures that were contrary to the patient's wishes. Because the law specifies the qualifications for the person to be selected as the surrogate, the selection of a surrogate is straightforward. Only twice in the thousands of times that health care surrogates have been appointed since 1993 has there been a challenge by a family member of the surrogate selection or the decision made by the surrogate.

Center for Health Ethics and Law

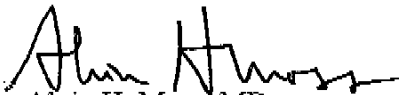
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West Virginia is now the process of developing a Health Care Decisions Act to combine it its advance directive statutes and the Health Care Surrogate Act. Because of the very favorable reception of the Health Care Surrogate Act, the sections from this statute will be preserved in the more comprehensive act being drafted.

I hope this information is helpful to you.

Sincerely,

A handwritten signature in black ink, appearing to read "Alvin H. Moss". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alvin H. Moss, MD
Professor of Medicine and Director

AHM/ldm